IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1102 OF 2005
IN
SUIT NO. 983 OF 2005

Vinaykant Mulchand Gandhi ... PLAINTIFF

V/s.

Mahesh N. Desai ... DEFENDANT

Ms. Neela A. Mahato for the plaintiff.
Mr. P.G. Desai for the defendant.

CORAM : ANOOP V. MOHTA, J.
DATED : 24th March, 2006

P.C.

. Heard parties.

2. Considering the averments made and in view of the order passed on 19th April, 2005 whereby during the pendency of the motion, the defendant is restrained from parting with the possession of the suit premises or otherwise creating third party interest in the suit premises. Considering this and in view of undisputed position on record that defendant is not owner of the property, but still he is in possession of the same I am inclined to grant prayer clause (b) except bracketed portion.

3. There is no case made out for appointment of a

receiver in Notice of Motion dated 25th February, 2005 in question. So far as prayer clause (c) is concerned, at this stage mesne profit for wrongful occupation of the premises cannot be considered. In view of this, the Notice of Motion is disposed of in terms of prayer clause (b), except bracketed portion.

Clause (b) -

. that pending the hearing and final disposal of the suit, the Defendant by himself, his servants and agents be restrained by an Order and Injunction of this Hon'ble Court (from entering or remaining on the said premises or storing any goods therein or) from parting with possession thereof or any part thereof and from inducting any third party or from alienating or encumbering the said premises or any part thereof or creating any third party rights therein in any manner whatsoever.

4. Plaintiff is at liberty to take out appropriate proceedings if case is made out. Notice of Motion is accordingly disposed of.

[ANOOP V. MOHTA, J.]